

File

A BILL TO BE ENTITLED

H.B. # 1320

AN ACT

regulating persons who purport to be able to detect deception or to verify truth of statements through the use of instrumentation as lie detectors, polygraphs, deceptographs, and/or similar or related devices and instruments; creating as an administrative board The Polygraph Examiners Board with licensing and/or regulatory powers over all such persons and instruments; providing for administrative proceedings and court review; establishing minimum instrumentation requirements and prohibiting the use of instruments or devices which do not meet minimum instrumentation requirements; providing for injunctions and penalties for violation of the provisions of this Act; validating the acts of the Polygraph Examiners Board established or attempted to be established by Acts, 1965, 59th Leg., R.S., Ch. 441, p. 888; providing a savings clause and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Short title

Section 1. This Act shall be known, and may be cited, as the Polygraph Examiners Act.

Purpose

Section 2. It is the purpose of this Act to regulate all persons who purport to be able to detect deception or to verify truth of statements through the use of instrumentation (as lie detectors, polygraphs, deceptographs, and/or similar or related devices and instruments without regard to the nomenclature applied thereto) and this Act shall be liberally construed to regulate all such persons and instruments. No person who purports to be able to detect deception or to verify truth of statements through instrumentation shall be held exempt from the provisions of this Act because of the terminology which he may use to refer to himself, to his instrument, or to his services.

Definitions

Section 3. In this Act, unless the context requires a different definition,

(1) "board" means the Polygraph Examiners Board;

(2) "secretary" means that member of the Polygraph Examiners Board selected by the board to act as secretary;

(3) "internship" means the study of polygraph examinations and of the administration of polygraph examinations by a trainee under the personal supervision and control of a polygraph examiner in accordance with a course of study prescribed by the board at the commencement of such internship;

(4) "person" means any natural person, firm, association, co-partnership, or corporation; and

(5) "polygraph examiner" means any person who purports to be able to detect deception or verify truth of statements through instrumentation or the use of a mechanical device.

Minimum instrumentation required

Section 4. Any instrument used to test or question individuals for the purpose of detecting deception or verifying truth of statements shall record visually, permanently, and simultaneously: (1) a subject's cardiovascular pattern and (2) a subject's respiratory pattern. Patterns of other physiological changes in addition to (1) and (2) may also be recorded. The use of any instrument or device to detect deception or to verify truth of statements which does not meet these minimum instrumentation requirements is hereby prohibited and the operation or use of such equipment shall be subject to penalties and may be enjoined in the manner hereinafter provided.

Creation of the board

Section 5. (a) There is hereby established in the Engineering Extension Service, Police Training Division, Texas A & M University System, a Polygraph Examiners Board consisting of six members who shall be citizens of the United States and residents of the state for at least two years prior to appointment, all of whom shall have been engaged for a period of five consecutive years as a polygraph examiner prior to appointment to the board, and at the time of appointment as an active polygraph examiner.

No two board members may be employed by the same person or agency. At least two members must be qualified examiners of a governmental law enforcement agency, one of which shall be the supervisor of the polygraph section of the Department of Public Safety, and at least two members must be qualified polygraph examiners in the commercial field. The members shall be appointed by the Governor of the State of Texas with the advice and consent of the Senate for a term of six years. The terms of office of members appointed to the initial board are two for two years; two for four years; and two for six years. Any vacancy in an unexpired term shall be filled by appointment of the Governor with the advice and consent of the Senate for the unexpired term.

(b) The number of employees and the salaries of each, including travel and expense allowance of the members of the Board shall be as fixed in the General Appropriation Bill.

(c) The board shall meet within 30 days after the effective date of this Act and elect a chairman, vice-chairman, and secretary from among its members. At the meeting, the board shall specify dates spaced at three month intervals on which examinations for polygraph examiners' licenses will be held. A copy of those dates shall forthwith be delivered to the secretary.

(d) The vote of a majority of the board members is sufficient for passage of any business or proposal which comes before the board.

Administration and expenses

Section 6. (a) The board shall issue regulations consistent with the provisions of this Act for the administration and enforcement of this Act and shall prescribe forms which shall be issued in connection therewith.

(b) An order or a certified copy thereof, over the board seal and purporting to be signed by the board members, shall be prima facie proof that the signatures are the genuine signatures of the board members, and that the board members are fully qualified to act.

(c) All fees collected under the provisions of this Act shall be paid to the Treasurer of the State of Texas. Funds necessary for the enforcement of this Act and the administration of its provisions shall be appropriated by the Legislature, but the funds so appropriated for a biennium shall not exceed the total amount of the fees which it is anticipated will be collected hereunder during such biennium.

Unauthorized practice

Section 7. It shall be unlawful for any person, including a city, county or state employee, to administer polygraph(or other examinations utilizing instrumentation for the purpose of detecting deception or verifying truth of statements)or to attempt to hold himself out as a polygraph examiner or to refer to himself by any other title which would indicate(or which is intended to indicate or calculated to mislead members of the public into believing)that he is qualified to apply instrumentation to detect deception or to verify truth of statements without first securing a license as herein provided. ⁵⁸

Examiner's license qualifications

Section 8. A person is qualified to receive a license as an examiner

- (1) who is at least 21 years of age; and
- (2) who is a citizen of the United States; and
- (3) who establishes that he is a person of honesty, truthfulness, integrity, and moral fitness; and
- (4) who has not been convicted of a felony or a misdemeanor involving moral turpitude; and
- (5) who holds a baccalaureate degree from a college or university accredited by the American Association of Collegiate Registrars and Admissions Officers, or in lieu thereof, has five consecutive years of active investigative experience immediately preceding his application; and
- (6) who is a graduate of a polygraph examiners course approved by the board and has satisfactorily completed not less than six months of

internship training, provided that if the applicant is not a graduate of an approved polygraph examiners course, satisfactory completion of not less than 12 months of internship training may satisfy this subdivision; and

(7) who has passed an examination conducted by the board, or under its supervision, to determine his competency to obtain a license to practice as an examiner.

(8) Prior to the issuance of a license, the applicant must furnish to the board evidence of a surety bond or insurance policy. Said surety bond or insurance policy shall be in the sum of \$5,000.00 and shall be conditioned that the obligor therein will pay to the extent of the face amount of such surety bond or insurance policy all judgments which may be recovered against the licensee by reason of any wrongful or illegal acts committed by him in the course of his examinations.

Acquisition of license by present examiners

Section 9. On the effective date of this Act, any person who held a license issued by the Board established or attempted to be established by Acts, 1965, 59th Leg., R.S., Ch. 441, p. 888, and whose license was in effect on the date on which said Act was held invalid, shall be automatically licensed hereunder until such date as his license under the Act aforesaid has expired and thereafter may renew his license on payment of the fee herein provided. The applicant must also satisfy the provisions of Section 8(8) of this Act.

Applications for original license

Section 10. Applications for original licenses shall be made to the secretary of the board in writing under oath on forms prescribed by the board and shall be accompanied by the required fee, which is not refundable. Any such application shall require such information as in the judgment of the board will enable it to pass on the qualifications of the applicant for a license.

Non-resident applicants

Section 11. (a) Each non-resident applicant for an original license or a renewal license shall file with the board an irrevocable consent that actions against said applicant may be filed in any appropriate court of any county or municipality of this state in which the plaintiff resides or in which some part of the transaction occurred out of which the alleged cause of action arose and that process on any such action may be served on the applicant by leaving two copies thereof with the secretary. Such consent shall stipulate and agree that such service or process shall be taken and held to be valid and binding for all purposes. The secretary of the board shall send forthwith one copy of the process to the applicant at the address shown on the records of the board by registered or certified mail.

(b) Non-resident applicants must satisfy the requirements of Section 8 of this Act. ⁵⁸

Applicant with out-of-state license

Section 12. An applicant who is a polygraph examiner licensed under the laws of another state or territory of the United States may be issued a license without examination by the board, in its discretion, upon payment of a fee of \$60 and the production of satisfactory proof that

(1) he is at least 21 years of age; and

(2) he is a citizen of the United States; and

(3) he is of good moral character; and

(4) the requirements for the licensing of polygraph examiner in such particular state or territory of the United States were at the date of the applicant's licensing therein substantially equivalent to the requirements now in force in this state; and

(5) the applicant had lawfully engaged in the administration of polygraph examinations under the laws of such state or territory for at least two years prior to his application for license hereunder; and

(6) such other state or territory grants similar reciprocity to license holders of this state; and

(7) he has complied with Section 11 of this Act.

Internship license

Section 13. (a) Upon approval by the board, the secretary shall issue an internship license to a trainee provided he applies for such license and pays the required fee within 10 days prior to the commencement of his internship. The application shall contain such information as may be required by the board.

(b) An internship license shall be valid for the term of 12 months from the date of issue. Such license may be extended or renewed for any term not to exceed 6 months upon good cause shown to the board.

(c) A trainee shall not be entitled to hold an internship license after the expiration of the original 12 month period and 6 month extension, if such extension is granted by the board, until 12 months after the date of expiration of the last internship license held by said trainee.

Examination and license fees

Section 14. (a) The fee to be paid by an applicant for an examination to determine his fitness to receive a polygraph examiner's license is \$20, which is not to be credited as payment against the license fee.

(b) The fee to be paid for an original polygraph examiner's license is \$60.

(c) The fee to be paid for an internship license is \$30.

(d) The fee to be paid for the issuance of a duplicate polygraph examiner's license is \$10.

(e) The fee to be paid for a polygraph examiner's renewal license is \$25.

(f) The fee to be paid for the extension or renewal of an internship license is \$25.

(g) The fee to be paid for a duplicate internship license is \$10.

(h) The fees required by this Act may be paid by the governmental agency employing the examiner.

Display of license and signature thereon

Section 15. A license or duplicate license must be prominently displayed at the place of business of the polygraph examiner or at the place of internship. Each license shall be signed by the board members and shall be issued under the seal of the board.

Change of business address

Section 16. Notice in writing shall be given to the secretary by the licensed examiner of any change of principal business location within 30 days of the time he changes the location. A change of business location without notification to the secretary shall automatically suspend the license theretofore issued.⁵⁹

0.5 Termination and renewal of examiner's license

Section 17. Each polygraph examiner's license shall be issued for the term of one year and shall, unless suspended or revoked, be renewed annually as prescribed by the board. A polygraph examiner whose license has expired may at any time within two years after the expiration thereof obtain a renewal license without examination by making a renewal application therefor and satisfying Section 8(2), (3), and (4). However, any polygraph examiner whose license expired while he was in the federal service on active duty with the armed forces of the United States, or the national guard called into service or training, or in training or education under the supervision of the United States preliminary to induction into the military service, may have his license renewed without examination if within two years after termination of such service, training, or education except under condition other than honorable, he furnishes the board with an affidavit to the effect that he has been so engaged and that his service, training, or education has been so terminated. Section 8(2), (3), and (4) of this Act must also be satisfied.

License required to maintain suit

Section 18. No action or counterclaim shall be maintained by any person in any court in this state with respect to any agreement or service for which a license is required by this Act, or to recover the agreed price or any compensation under such agreement, or for such services for which a license is required by this Act without alleging and proving that such person had a valid license at the time of making such agreement or perform such services.

Refusal, suspension, revocation -- grounds

Section 19. The board may refuse to issue or may suspend or revoke a license on any one or more of the following grounds:

- (1) for failing to inform a subject to be examined as to the nature of the examination;
- (2) for failing to inform a subject to be examined that his participation in the examination is voluntary;
- (3) material misstatement in the application for original license or in the application for any renewal license under this Act;
- (4) wilful disregard or violation of this Act or of any regulation or rule issued pursuant thereto, including, but not limited to, wilfully making a false report concerning an examination for polygraph examination purposes;
- (5) if the holder of any license has been adjudged guilty of the commission of a felony or a misdemeanor involving moral turpitude;
- (6) making any wilful misrepresentation or false promises or causing to be printed any false or misleading advertisement for the purpose of directly or indirectly obtaining business or trainees;
- (7) having demonstrated unworthiness or incompetency to act as a polygraph examiner as defined by this Act;
- (8) allowing one's license under this Act to be used by any unlicensed person in violation of the provisions of this Act;

(9) wilfully aiding or abetting another in the violation of this Act or any regulation or rule issued pursuant thereto;

(10) where the license holder has been adjudged as habitual drunkard or mentally incompetent as provided in the Probate Code;

(11) failing, within a reasonable time, to provide information requested by the secretary as the result of a formal complaint to the board which would indicate a violation of this Act; or

(12) failing to inform the subject of the results of the examination if so requested. ⁵⁷

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Violation by one examiner or
trainee not to affect employer

Section 20. Any unlawful act or violation of any of the provisions of this Act on the part of any polygraph examiner or trainee shall not be cause for revocation of the license of any other polygraph examiner for whom the offending examiner or trainee may have been employed, unless it shall appear to the satisfaction of the board that the polygraph examiner-employer has wilfully or negligently aided or abetted the illegal actions or activities of the offending polygraph examiner or trainee.

Registration of examiners with county clerks

Section 21. Each polygraph examiner shall register with the county clerk in the county wherein he maintains a business address. The county clerk of each county shall maintain a list of all polygraph examiners registered in his county.

Board hearing

Section 22. (a) When there is cause to refuse an application or to suspend or revoke the license of any polygraph examiner, the board shall, not less than 30 days before refusal, suspension, or revocation action is taken, notify such person in writing, in person or by certified mail at the last address supplied to the board by such person, of such impending refusal, suspension, or revocation, the reasons therefor, and of his right to an administrative hearing for the purpose of determining whether or not

the evidence is sufficient to warrant the refusal, suspension, or revocation action proposed to be taken by the board. If, within 20 days after the personal service of such notice or such notice has been deposited in the United States mail, such person has not made a written request to the board for this administrative hearing, the board is authorized to suspend or revoke the polygraph examiner's license of such person without a hearing. Upon receipt by the board of such written request of such person within the 20 day period as set out above, an opportunity for an administrative hearing shall be afforded as early as is practicable. In no case shall the hearing be held less than 10 days after written notification thereof, including a copy of the charges, shall have been given the person by personal service or by certified mail sent to the last address supplied to the board by the applicant or licensee. The administrative hearing in such cases shall be before the board.

(b) The board shall conduct the administrative hearings and it is authorized to administer oaths and issue subpoenas for the attendance of witnesses and the production of relevant books, papers, documents, etc. On the basis of the evidence submitted at the hearing, the board shall take whatever action it deems necessary in refusing the application or suspending or revoking the license.

Judicial review

Section 23. Any person dissatisfied with the action of the board in refusing his application or suspending or revoking his license, or any other action of the board, may appeal the action of the board by filing a petition within 30 days thereafter in the district court in the county where the person resides or in the district court of Travis County, Texas, and the court is vested with jurisdiction and it shall be the duty of the court to set the matter for hearing upon 10 days written notice to the board and the attorney representing the board. The court in which the petition of appeal is filed shall determine whether or not a cancellation or suspension

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of a license shall be abated until the hearing shall have been consummated with final judgment thereon or whether any other action of the board should be suspended pending hearing, and enter its order accordingly, which shall be operative when served upon the board, and the court shall provide the attorney representing the board with a copy of the petition and order. The board shall be represented in such appeals by the district or county attorney of the county or the Attorney General, or any of their assistants. ^{p-7} The board shall initially determine all facts, but the court upon appeal shall set aside the determination of the board if the board's determination (1) is not based upon substantial evidence upon the entire record; (2) is arbitrary or capricious; (3) is in violation of statutory requirements; or (4) was made without affording to licensee or applicant due process of law.

Surrender of license

Section 24. Upon the revocation or suspension of any license, the licensee shall forthwith surrender the license or licenses to the secretary; failure of a licensee to do so shall be a violation of this Act and upon conviction, shall be subject to the penalties hereinafter set forth. At any time after the suspension or revocation of any license, the secretary shall restore it to the former licensee, upon the written recommendations of the board.

Proceedings through the attorney general

Section 25. If any person violates any provisions of this Act, the secretary shall, upon direction of a majority of the board, in the name of the State of Texas, through the Attorney General of the State of Texas, apply in any district court of competent jurisdiction, for an order enjoining such violation or for an order enforcing compliance with this Act. Upon the filing of a verified petition in the court, the court or any judge, thereof, if satisfied by affidavit or otherwise that the person has violated this Act, may issue a temporary injunction, without notice or bond, enjoining such continued violation and if it is established that the person has violated or is violating this Act, the court, or any judge thereof, may enter a decree

perpetually enjoining the violation or enforcing compliance with this Act. In case of violation of any order or decree issued under the provisions of this Section, the court, or any judge thereof, may try and punish the offender for contempt of court. Proceeding under this Section shall be in addition to, and not in lieu of, all other remedies and penalties provided by this Act.

Penalties

Section 26. Any person who violates any provision of this Act or any person who falsely states or represents that he has been or is a polygraph examiner or trainee or that he is qualified to apply instrumentation to the detection of deception or verification of truth of statements shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$100 nor more than \$1,000 or by imprisonment in the county jail for a term of not to exceed six months, or both.

Admissibility of results as evidence

Section 27. Nothing in this Act shall be construed as permitting the results of truth examinations or polygraph examinations to be introduced or admitted as evidence in a court of law.

Validating clause

Section 28. All acts and governmental proceedings performed by the Polygraph Examiners Board and its officers since the creation or attempted creation of such Board by Acts, 1965, 59th Leg., R.S. Ch. 441, p. 888, are hereby in all respects validated as of the date of such acts or proceedings.

Savings clause

Section 29. The provisions of this Act are severable. If any provision of this Act or the application thereof to any person or circumstance

shall be held to be invalid or unconstitutional, the remainder of the Act and the application of such provisions to other persons or circumstance shall not be affected thereby.

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Emergency clause

Section 30. The fact that Acts, 1965, 59th Leg., R.S., Ch. 441, p. 888, has been held by the Texas Supreme Court to be invalid solely because of a defect in the caption to the bill and that this state will have no law licensing and regulating the use of lie detection or polygraph examination techniques and instruments by reason of said decision, and that untrained and unlicensed examiners, and examiners using inadequate techniques and equipment cause great harm to the general public, creates an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three separate days in each House be suspended, and this Rule is hereby suspended; and that this Act take effect and be in force from and after its passage, and it is so enacted.

H.B. 1320 By: PRICE

A BILL TO BE ENTITLED

AN ACT regulating persons who purport to be able to detect deception or to verify truth of statements through the use of instrumentation as lie detectors, polygraphs, deceptographs, and/or similar or related devices and instruments; creating as an administrative board The Polygraph Examiners Board with licensing and/or regulatory powers over all such persons and instruments; providing for administrative proceedings and court review; establishing minimum instrumentation requirements and prohibiting the use of instruments or devices which do not meet minimum instrumentation requirements; providing for injunctions and penalties for violation of the provisions of this Act; validating the acts of the Polygraph Examiners Board established by Acts, 1965, 59th Leg., R.S., Ch. 441, p. 888; providing a savings clause and declaring an emergency.

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Dorothy Hallman

Chief Clerk, House of Representatives

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READ 1ST TIME

AND REFERRED TO COMMITTEE ON

Governmental Affairs &

Efficiency

Dorothy Hallman

Chief Clerk, House of Representatives